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Jan 22, 1990

Ms. Christine Gebbie
Chairperson, Secretarial Panel
for the Evaluation of
Epidemiologic Research Activities
U.S. Department of Energy
Washington, D.C. 20585

Dear Ms. Gebbie:

At the Panel meeting on December 28, 1989, you asked for our comments on the Rongelap recommendations to the Panel as well as our views on the ownership of the medical and radiological safety records in the custody of the Brookhaven National Laboratory. These comments are enclosed.

I appreciated the opportunity to discuss our programs with the Panel and would welcome the chance to amplify our statements, and the enclosed comments, at a future meeting should you desire.

If the Panel or your staff require any additional information, please let me know.

Sincerely,

John E. Rudolph, Director
Weapons Research Division
Office of Weapons Research,
Development, and Testing
Defense Programs

Enclosure

cc w/encl:
Senator Anjain, MI
D. Weiman

DOE
John Rudolph's Files
D File
Marshall Islands 1990

bcc w/encl
W. Adams, BNL
H. Brown, NV
W. Robison, LLNL
O. de Brum, RMI (ATTN: P. Oliver)

bcc w/encl & Senator Anjain statement
G. Knight, CP-40
L. Morgan, DOI

bcc w/o encl:
F. C. Gilbert, DP-2

DP-242:JERudolph:smg:3-3618:01/22/90 (smg passport/WP5/gebbie.mi)

Distribution:
so:Addressee w/encl
cc:J. Anjain w/encl
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bcc:W. Adams, w/encl
bcc:H. Brown, w/encl
bcc:W. Robison w/encl
bcc:O. de Brum, RMI (ATTN; P. Oliver)
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DP-242

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Ownership of Records of Interest to Rongelap

It has been held that most records generated by our integrated contractors are the property of the United States (U.S.) Government. The basis of this position has been, in general, that since the contractor is operating a Government-owned facility and conducts no private work, the records which document the Government work are Government property.

However, some records represent a mix of Governmental and private interests, and the records generated by our medical and radiological safety programs would seem to fall in that category. Whereas the Government may "own" the form (documents) in which the information resides, some information requires quality assurance before release; some, which if of a personal or medical nature, is subject to other requirements; e.g., the Privacy Act; standards of medical ethics; which give the individual some control as to access and release.

Perhaps the question more relevant to the Panel's (and to Rongelap's) concern is not who owns the records but rather is the information in the contractor's custody available for legitimate epidemiologic research? Our answer is "yes," subject only to those legal and ethical constraints of which the Panel is undoubtedly aware.

Comments on the Rongelap Atoll Local Government Recommendations; Statement Before the SPEERA, December 28, 1989

1. Destruction of Records

No records developed by the Department of Energy (DOE) Medical or the Radiological Safety Programs have been destroyed nor are there any plans to do so. All documentation has been considered to have been the property of the U.S. Government and as such has been maintained in the custody of the Brookhaven National Laboratory (BNL) since the inception of the programs.

2. Access to Medical/Radiation Records

I am not familiar with the "Three Mile Island Fund" research effort and therefore am reluctant to draw comparisons. Our medical program has historically provided access to records by the individual concerned, the Republic of the Marshall Islands (RMI) health authorities, and to those providing care to individuals referred for treatment at DOE expense.

With regard to the results of urinalysis for plutonium dose and wholebody counts for cesium, we have provided individual readings (with identity protection) to Dr. Kohn for his use in the Rongelap Reassessment Project, to RMI, and to the Rongelap authorities. These data have been both raw and evaluated. However, our general policy and practice has been not to release unevaluated data, and only recently have we achieved a level of confidence in our plutonium measurement techniques that would permit responsible disclosure.

3. Phase 2 Comprehensive and Independent Study of Rongelap Atoll

This study is provided for by Public Law 99-239 and is limited to Rongelap Island, rather than the entire Atoll. According to Section 103(i)(2) of the statute, a "... complete survey of radiation and other effects of the nuclear testing program relating to the habitability of Rongelap Island." would be authorized if the independent review of DOE's data (conducted by and reported on by Dr. Henry Kohn's Rongelap Reassessment Project on March 1, 1989) concluded that the DOE data did not support the habitability of the Island. Dr. Kohn's report contained the following statements relative to habitability:

1. Section 5.1, "It seems clear that under the ordinary conditions of Rongelap life there is no significant radiation danger associated with residence on Rongelap Island for adults."

2. Section 5.2, "(7) The fact that Rongelap [Island] appears suitable for resettlement now should not be lost sight of."

As a result of the implied caveat regarding habitability for infants and children and because of the uncertainty in our early plutonium measurements, additional data has been developed by DOE and was provided to Dr. Kohn in October 1989. Upon review of this data, Dr. Kohn's testimony at the November 16, 1989, Congressional hearings on Rongelap included the following conclusions:

1. "The Reassessment Project found that the dose due to residence on Rongelap Island was within the permissible range (less than 5 rem in 30 years"

2. "Although the Reassessment Project concluded that infants and small children would not be over exposed on return to Rongelap Island, it recommended that further studies be done to provide assurance on this point. Livermore report UCRL-53917 (1989) provides this assurance for cesium-137 and strontium-90 which account for more than 90% of the dose."

3. With regard to plutonium dose: "Brookhaven has attacked the problem, and the results to date on 67 urines make it clear that urine sample contamination was the major cause of the [earlier unexpected readings]. I would dare to predict that [these readings] will hold for the remaining 169 samples whose analysis should be completed by July 1990.

In view of the current conclusions of the independent review provided for by Public Law 99-239, it would appear that the Phase 2 study would not be required. From a radiological standpoint only, we believe a further study to establish the radiological condition of Rongelap Island and Rongelap Atoll is unnecessary. That information has been collected, analyzed, and made public based on many years of study. Our scientific methods have been reviewed as to collection and analysis techniques, and our results have been verified by a number of independent national and international peer reviews. Accordingly, it would seem to be an unnecessary expenditure of public funds to conduct

additional studies. With regard to authorizing the study, the statute reserves that right to the Congress. Should the DOE's position on the study be requested, the staff recommendation to the Secretary would be as stated above. If the study were authorized and funded, DOE would, of course, cooperate as required.

4. Epidemiology and Rongelap

The Department has, at the November 16, 1989, Congressional hearings indicated its intention to subject the Rongelap issues to an independent review. In the event that the review was to include epidemiology, we would support that effort with all relevant records and other information required.

5. DOE, BNL, Nuclear Claims Tribunal and Access to Information

To my knowledge, we have received no request from the Nuclear Claims Tribunal, but we would cooperate in any reasonable manner to honor a request. With regard to the cost of duplicating records, we are required by law to comply with a "full cost recovery" policy when providing services to outside entities. Nevertheless, we are willing to consider a request from the Tribunal and will work out the arrangements with that body, including the lowest cost permitted by law, if any costs are involved.

6. DOE Has a Conflict of Interest

The organizational assignment to Defense Programs (DP) of the management and execution of our Marshall Islands program has had no influence on its technical content or its scientific results. Prior to 1983, the program was managed by another Headquarters organization.

As to whether DOE is the appropriate U.S. Government agency to conduct these programs, that is a matter for the President and the Congress to address. As a practical matter, however, DOE is the agency which has the requisite expertise within the Executive Branch to deal with the technical issues involved.

7. DOE/BNL Should Make Complete Medical and Exposure Records Available in the Marshall Islands

As previously stated, our medical records are available during the medical missions, and a copy of the examination findings and treatment are given to the individual at the time of the examination. In addition, copies are subsequently forwarded to each of three RMI health agencies. Medical information is, therefore, already available in the Marshall Islands. No medical records or other medical data are located other than at BNL and with the Republic of the Marshall Islands.

8. Evaluate Cost Effectiveness of Transferring the DOE Medical Program to the Republic of the Marshall Islands

Such a transfer would probably require legislation since Section 103(h)(1) of Public Law 99-239 provides for the continuation of the "DOE Radiological

Health Care Program" by "... an appropriate department or agency of the United States or by contract with a United States firm." However, DOE would not oppose studying the issue nor would it object to a transfer if a study concluded it would be cost effective to do so. Presumably, the costs would continue to be borne by the U.S. Government and some oversight by the U.S. would be required. Such oversight need not necessarily be vested in DOE.

9. DOE Should Disclose all Research and Medical Data to Rongelap Citizens-- Secret Research Should be Halted

DOE's Brookhaven programs in the Marshall Islands are not research-oriented programs nor are they conducted in Secret. All medical and radiological safety efforts involving "human participation" are explained to the individuals involved, and their participation is voluntary. Medical findings are disclosed and discussed with the individuals, and the results published. We had been reluctant to release raw plutonium data in the past since we believed the measurements were not accurate, and we did not wish to alarm the people unnecessarily. We now have confidence in our measurement technique and evaluated data on plutonium dose measurements has been provided to the Rongelap and Utirik local government representatives and to RMI. A full report will be published at the conclusion of our analysis. Our preliminary findings have already been communicated to the Marshallese, and our final report will be discussed with RMI and the Rongelap and Utirik people.

10. Future Relationship Between DOE/BNL and Rongelap

Although this item contains no recommendation, it relates directly to number 8 above, and our comments on that recommendation apply here with the following addition. The Department's programs in the Marshall Islands encompass more than Rongelap and are broader in scope than the medical and radiological safety programs which the Rongelap representatives have called into question. There appears to be no practical way to isolate "Rongelap" from the rest of the Marshall Islands from the perspective of the DOE programs. This issue could be considered by the study contemplated in 8 above. At this point, we would recommend against such isolation.